In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1340

HOTEL, RESTAURANT EMPLOYEES AND BARTENDERS' UNION, LOCAL 5, AFL-CIO, PETITIONER

v.

INTER-ISLAND RESORTS, LTD., d/b/a KONA SURF HOTEL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. Upon charges filed by petitioner Hotel Employees Union, the National Labor Relations Board found that respondent Inter-Island Resorts, Ltd. (the Company) and respondent International Longshoremen's and Warehousemen's Union (ILWU) had violated the National Labor Relations Act by entering into a collective bargaining agreement covering the Company's employees at a time when a petition for a representation election, filed by Hotel Employees and pending before the Board, was sufficient to raise a real question concerning the representation of those

employees (Pet. App. v-x). The court of appeals, finding that the question raised by the election petition was resolved by the clear showing of a card majority obtained by ILWU, declined to sustain the Board's findings and to enforce its order (Pet. App. i-iv). While the Board believes that the court of appeals erred, it did not file a petition for a writ of certiorari, for, in its view, the case does not warrant further review. The present petition is filed by Hotel Employees, the charging party before the Board.

2. While a charging party before the Board has the right to intervene in proceedings in the courts of appeals to enforce or review Board orders (*Auto Workers* v. *Scofield*, 382 U.S. 205), it does not become a party to a court of appeals proceeding absent such intervention. Hotel Employees never sought to intervene in, and thus never became a party to, the court of appeals proceeding here. Accordingly, it has no standing to seek certiorari. *Id.* at 209; cf. *Railroad Trainmen* v. *Baltimore & Ohio Railroad Co.*, 331 U.S. 519, 524.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

JUNE 1975.